

TEMPLATE

# AIA® Document A121™CMc – 2003 and AGC Document 565

## ***Standard Form of Agreement Between Owner and Construction Manager***

*where the Construction Manager is Also the Constructor*

### **Editing Template**

CAUTION: Take care not to remove or otherwise edit the FillPoint areas when making custom edits to this document.

***This AIA Document A121 CMc – 2003 and AGC Document 565 has been revised with 2003 Arizona Modifications and approved by the Arizona Attorney General's Office.***

#### **AGREEMENT**

made as of the %[Day1] day of %[Month1] in the year of %[Year1]  
(In words, indicate day, month and year)

**BETWEEN** the Owner:  
(Name and address)

%[OwnerFullFirmName]  
%[OwnerLongAddress]

and the Construction Manager:  
(Name and address)

%[ConstructionManagerFullFirmName]  
%[ConstructionManagerLongAddress]

The Project is:  
(Name, address and brief description)

%[ProjectName]  
%[ProjectLocation]  
%[ProjectDescription]

The Architect is:  
(Name and address)

%[ArchitectFullFirmName]  
%[ArchitectLongAddress]

The Owner and Construction Manager agree as set forth below:

#### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

### § 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™-1997 with 2001 Arizona Modifications, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™-1997 with 2001 Arizona Modifications shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™-1997 with 2001 Arizona Modifications shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

### § 2.1 PRECONSTRUCTION PHASE

#### § 2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

#### **2.1.1.1 CONSTRUCTION MANAGEMENT PLAN:**

The Construction Manager shall prepare a Construction Management Plan for the Project. In preparing the Construction Management plan, the Construction Manager shall consider the Owner's schedule, cost, and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be developed by the project team based upon mutual concurrence.

#### § 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

#### § 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule

updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

**2.1.3.1 MASTER SCHEDULE:**

*In accordance with the Construction Management Plan, the Construction Manager shall prepare a Master Schedule for the Project. The Master Schedule shall specify the proposed start and finish dates for each project activity and the dates by which certain construction activities must be complete. The Construction Manager shall submit the Master Schedule to the Owner for acceptance.*

**2.1.3.2 DESIGN PHASE MILESTONE SCHEDULE:**

*After the Owner accepts the Master Schedule the Construction Manager shall prepare a Milestone Schedule for the Design Phase. The Design Phase Milestone Schedule may be used in the request for proposals and contract for the Design Professional and shall be a method for judging progress during the Design Phase.*

**§ 2.1.4 PHASED CONSTRUCTION**

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

**2.1.4.1 REVISIONS TO THE CONSTRUCTION MANAGEMENT PLAN:**

*During the Design Phase, the Construction Manager shall make recommendations to the Owner regarding revisions to the Construction Management Plan. Revisions approved by the Owner shall be incorporated into the Construction Management Plan and accepted by the Owner*

**2.1.4.2 DESIGN PHASE INFORMATION:**

*The Construction Manager shall monitor the Design Professional's compliance with the Construction Management Plan and the Management Information System and the Construction Manager shall coordinate and expedite the flow of information between the Owner, Design Professional and others.*

**§ 2.1.5 PRELIMINARY COST ESTIMATES**

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

**2.1.5.5 PROJECT AND CONSTRUCTION BUDGET:**

*Based on the Construction Management Plan, the Construction Manager shall prepare a Project and Construction Budget based on separate divisions of the Work required for the Project. The Construction Manager shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised as directed by the Owner*

### § 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

### § 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

### § 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

#### **2.1.8.1 PROJECT MEETINGS:**

*The Construction Manager shall conduct periodic Project meetings attended by the Owner, Design Professional and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of design progress. The Construction Manager shall prepare and distribute minutes of these meetings to the Owner, the Design Professional and others.*

#### **2.1.8.2 REVIEW OF DESIGN DOCUMENTS:**

*The Construction Manager shall review the design documents for clarity, consistency, constructability and coordination among the Contractors. The results of the review shall be provided as notations on the documents. The Construction Manager is not responsible for providing, nor does the Construction Manager control the Project design and contents of the design documents. By performing the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The Construction Manager's action in reviewing the Project design, design documents and in making recommendations as provided herein are only advisory to the Owner.*

#### **2.1.8.3 DESIGN RECOMMENDATIONS:**

*The Construction Manager shall make recommendations to the Owner and Design Professional with respect to constructability, construction cost, and sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work.*

#### **2.1.8.4 OWNER DESIGN REVIEWS:**

*The Construction Manager shall expedite the Owner's design reviews by compiling and conveying the Owner's comments to the Design Professional.*

#### **2.1.8.5 APPROVALS BY REGULATORY AGENCIES:**

*The Construction Manager shall monitor transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems in completing such reviews.*



**2.1.8.6 PUBLIC RELATIONS:**

The Construction Manager shall assist the Owner in public relations activities and shall prepare information for and attend public meetings regarding the project.

**2.1.8.7 REVISIONS TO MASTER SCHEDULE:**

While performing the services provided in paragraph 2.1.3.1, and as necessary throughout the Design Phase, the Construction Manager shall recommend revisions to the Master Schedule. The Owner shall issue change orders as needed to the appropriate parties to implement the Master Schedule revisions.

**2.1.8.8 MONITORING THE DESIGN PHASE MILESTONE SCHEDULE:**

While performing the services provided in paragraphs 2.1.4.2, and 2.1.8.1, the Construction Manager shall monitor compliance with the Design Phase Milestone Schedule.

**2.1.8.9 PRE-BID CONSTRUCTION SCHEDULES:**

Prior to transmitting Contract Documents to bidders, the Construction Manager shall prepare a Pre-Bid Construction Schedule for each part of the Project and make the schedule available to the bidders during the Bid and Award Phase.

**2.1.8.10 PROJECT AND CONSTRUCTION BUDGET REVISION:**

The Construction Manager shall make recommendations to the Owner concerning design changes that may result in revision to the Project and Construction Budget and divisions of the Work required for the Project.

**2.1.8.11 COST CONTROL:**

The Construction Manager shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Design Professional. The estimate for each submittal shall be accompanied by a report to the Owner and Design Professional identifying variances from the Project and Construction Budget. The Construction Manager shall coordinate and expedite the activities of the Owner and Design Professional when changes to the design are required to remain within the Project and Construction Budget.

**2.1.8.12 VALUE ANALYSIS STUDIES:**

The Construction Manager shall provide value analysis studies for major construction components. The results of these studies shall be in report form and distributed to the Owner and Design Professional.

**2.1.8.13 CASH FLOW REPORT:**

The Construction Manager shall periodically prepare and distribute a Cash Flow Report.

**2.1.8.14 DESIGN PHASE CHANGE ORDER REPORT:**

The Construction Manager shall prepare and distribute Design Phase Change Order Reports that shall list all Owner-approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

**2.1.8.15 CONTRACTOR AND MAJOR SUPPLIER SELECTIONS:**

There are two ways for the Construction Manager to select Subcontractors and major suppliers prior to submission of a Guaranteed Maximum Price Proposal. They are qualifications-based selection and competitive bidding.

**2.1.8.16 SELECTION BY QUALIFICATION ONLY:**

The State may approve the selection of a Subcontractor(s) based only on their qualifications when the State agrees that it is in the best interest of the Project.

2.1.8.17 Qualification based selection of a Subcontractor(s) should only occur prior to the submittal of the Guaranteed Maximum Price Proposal.

2.1.8.18 The Construction Manager must receive approval of the selected Subcontractor(s).

2.1.8.19 The Construction Manager will negotiate costs for services/supplies from each Subcontractor under this method.

**2.1.8.20** *Construction contracts for the Work required for the Project shall be between the Construction Manager and Subcontractors. The Construction Manager shall request and receive bids for each contract and shall make a recommendation to the Owner with respect to award of a contract to the lowest responsive and responsible bidder. The Construction Manager shall enter into a contract with that bidder within a reasonable amount of time after receipt of approval of award from the Owner.*

**2.1.8.21** *At the Owner's option and mutual agreement the Construction Manager shall be eligible to perform work on the Project. Should the Construction Manager elect to do so, he may be required to offer a sealed bid for such parts of the Project. If required the Construction Manager's bid shall be due on the date established for receipt of the other separate contractor bids. In the event that the Construction Manager is determined to be the lowest responsive and responsible bidder on such work, the Owner shall approve award to the Construction Manager and shall enter into a separate contract with the Construction Manager for that work.*

**2.1.8.22 PRE-QUALIFYING BIDDERS:**

*The Construction Manager shall develop lists of possible bidders and pre-qualify bidders. This service shall include the following: preparation and transmission of questionnaires; receiving and analyzing completed questionnaires; interviewing possible bidders, bonding agents and financial institutions; and preparing summary reports regarding this activity to the Owner. The Construction Manager shall also prepare a bidders list for each bid package.*

**2.1.8.23 DELIVERY OF BID DOCUMENTS:**

*The Construction Manager shall expedite the delivery of bid documents to the bidders. The Construction Manager shall obtain documents from the Design Professional and arrange for printing, binding, wrapping and delivery to the bidders. The Construction Manager shall maintain a record of bidders receiving documents.*

**2.1.8.24 PRE-BID CONFERENCE:**

*In conjunction with the Design Professional, the Construction Manager shall conduct Pre-bid Conferences. These conferences shall be forums for the Construction Manager and Design Professional to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, the project administrative requirements and technical information.*

**2.1.8.25 INFORMATION TO BIDDERS:**

*The Construction Manager shall develop and coordinate procedures to provide answers to bidder's questions.*

**2.1.8.26 ADDENDA:**

*The Construction Manager shall receive from the Design Professional a copy of all Addenda. The Construction Manager shall review addenda for clarity, consistency and coordination among the bidders. By performing the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the design documents. The Construction Manager shall also distribute a copy of all addenda to each bidder receiving documents.*

**2.1.8.27 BID OPENING:**

*The Construction Manager shall receive, publicly open, and evaluate the bids with the State Representative in attendance. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the Construction Manager, in addition to bid price, may consider the following factors: past performance on similar projects, qualifications and experience of personnel assigned, quality management plan, approach or understanding of the work to be performed, and performance schedule to complete the work. The final evaluation of contractor bids will be done with the State Representative in attendance to observe and witness the process. The Construction Manager will resolve any contractor bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of Work.*

**2.1.8.28 CONSTRUCTION CONTRACTS:**

*At the direction of the Owner, the Construction Manager shall prepare, execute, and deliver the Contract Documents between the Construction Manager and the Subcontractors. The Construction Manager shall also issue the notices to proceed.*

**2.1.8.29 PRE-CONSTRUCTION CONFERENCE:**

In connection with the Design Professional, the Construction Manager shall conduct a Pre-Construction Conference during which the Construction Manager shall review the reporting procedures and other rules.

**2.1.8.30 PERMITS, INSURANCE AND LABOR AFFIDAVITS:**

The Construction Manager shall verify that the Contractor has secured the required building permits, bonds, insurance, labor affidavits and waivers.

**2.1.8.31 CONTRACTOR'S CONSTRUCTION SCHEDULE:**

The Construction Manager shall provide a copy of the Master Schedule to the bidders. As part of the Notice of Award, the Construction Manager shall inform each Subcontractor of the requirements for the preparation of the Subcontractor's Construction Schedule. Each Subcontractor shall prepare its own Construction Schedule in accordance with the requirements of the Contract Documents.

**2.1.8.32 ANALYZING BIDS:**

Upon Receipt of bids, the Construction Manager shall evaluate the bids, including alternate prices and unit prices.

**§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

**§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

**§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

**THE GUARANTEED MAXIMUM PRICE SHALL BE DETERMINED AND MANAGED AS FOLLOWS:**

~~§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any~~



~~inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. The Guaranteed Maximum Price is the total Cost of the Project, as defined herein. The Guaranteed Maximum Price includes the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data shall be directly correlated to the specific design drawings and specifications in existence at the time the Guaranteed Maximum Price is prepared. The assumptions used in the preparation of the Guaranteed Maximum Price shall be identified by the Construction Manager as part of the Guaranteed Maximum Price documentation, in accordance with Article 1 of Amendment #1 of A121 and appended hereto.~~

2.2.5.1 During the Design Phase, but not later than 60 days prior to the date that the Work is advertised for bids, the Owner, at his sole option, may request the Construction Manager to establish a Guaranteed Maximum Price for the Project. The Guaranteed Maximum Price shall be documented by the Construction Manager as defined in Article 11 and, once established the Guaranteed Maximum Price shall be subject to modification only as defined in this Agreement.

2.2.5.2 The Guaranteed Maximum Price shall be submitted to the Owner not more than 30 days after receipt by the Construction Manager of the Owner's request for the Guaranteed Maximum Price. The Owner shall accept such Guaranteed Maximum Price within 15 days of the date of receipt unless such time is mutually agreed to be extended. If the Owner does not accept the Guaranteed Maximum Price within the time period herein provided, such price shall be presumed to be rejected by the Owner.

2.2.5.3 In the event the Owner does not accept the Construction Manager's Guaranteed Maximum Price and elects not to go forward with the Project, the Construction Manager shall be reimbursed in accordance with the requirements for termination for convenience as defined in Articles 10 of this agreement.

2.2.5.4 In the event the Owner does not request the Construction Manager to establish a Guaranteed Maximum Price or does not accept the Construction Manager's Guaranteed Maximum Price, but chooses to proceed with the Project, then all provisions of this Agreement regarding the Guaranteed Maximum Price and adjustments thereto shall become null and void. All other provisions of this Agreement shall remain in full force and effect, with all Project costs being reimbursed to the Construction Manager by the Owner in accordance with this Agreement without the limitations imposed by Article 11.6.

2.2.5.5 In the event that the Guaranteed Maximum Price is accepted by the Owner within the time stipulated herein, the applicable sections of Article 11 of this Agreement shall be completed and initialed by both parties to this Agreement and the Construction Manager shall become responsible for the means, methods, sequences, and procedures used in the construction of the Project and shall proceed with the Construction Manager's Basic Services.

~~§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager. The Guaranteed Maximum Price shall include those taxes applicable to the Project that are legally enacted at the time the Guaranteed Maximum Price is established. Any increase or decrease in taxes that affect the Guaranteed Maximum Price and that are enacted after the Guaranteed Maximum Price is submitted shall be incorporated into that Price by change order.~~

~~§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing. The Owner may change the scope of the Project or a part thereof and the Guaranteed Maximum Price shall then be adjusted as provided in Article 7 of the AIA 201 with 2001 Arizona Modifications.~~

~~§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.~~

~~§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.~~

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

## § 2.3 CONSTRUCTION PHASE

### § 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
  - (a) award a subcontract, or
  - (b) undertake construction Work with the Construction Manager's own forces, or
  - (c) issue a purchase order for materials or equipment required for the Work.

### § 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

~~§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.~~

### **2.3.2.4 ONSITE MANAGEMENT AND CONSTRUCTION PHASE COMMUNICATION PROCEDURES:**

The Construction Manager shall provide and maintain a management team on the Project site to provide contract administration and the Construction Manager shall establish and implement coordination and communication procedures among the Construction Manager, Owner, Design Professional and Subcontractors.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™-1997 with 2001 Arizona Modifications, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

**2.3.2.8 CONSTRUCTION ADMINISTRATION PROCEDURES:**

The Construction Manager shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contract Schedule adjustment, change orders, substitutes, payment requests and the maintenance of logs. The Construction Manager shall maintain daily job reports. The Construction Manager shall be the party to whom requests for information, submittals, Subcontractor schedule adjustment, substitutes, change order requests and payment requests shall be submitted.

**2.3.2.9 PROJECT SITE MEETINGS:**

Periodically the Construction Manager shall conduct meetings at the Project site with each Contractor and the Construction Manager shall conduct coordination meetings with all Subcontractors, the Owner and Design Professional. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the Owner and Design Professional.

**2.3.2.10 COORDINATION OF OTHER INDEPENDENT CONSULTANTS:**

Technical inspection and testing provided by the Design Professional or others shall be coordinated by the Construction Manager. The Construction Manager shall be provided a copy of all inspection and testing reports on the day of the inspection or test. The Construction Manager is not responsible for providing, nor does the Construction Manager control the actual performance of technical inspection and testing. The Construction Manager is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

**2.3.2.11 REVIEW OF REQUESTS FOR CHANGES TO THE CONTRACT TIME AND PRICE:**

The Construction Manager shall review the contents of a request for changes to the contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Construction Manager's analysis reveals that the request is valid, the Construction Manager shall prepare a detailed report to the Owner for approval. The Construction Manager shall prepare the necessary change order documents for signing by the Subcontractor or the Owner.

**2.3.2.12 QUALITY REVIEW:**

The Construction Manager shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to guard the Owner against defects and deficiency in the work of the Subcontractor. The Construction Manager shall reject work and transmit to the Subcontractor a notice of nonconforming work when it is the opinion of the Construction Manager that the Work does not conform to the requirements of the Contract Documents. Except for Minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, evoke, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

**2.3.2.13 OPERATION AND MAINTENANCE MATERIALS:**

The Construction Manager shall receive from the Subcontractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project.

## § 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™-1997 with 2001 Arizona Modifications shall apply to both the Preconstruction and Construction Phases.

## § 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™-1997 with 2001 Arizona Modifications shall apply to both the Preconstruction and Construction Phases.

### **2.6 MASTER SCHEDULE:**

*The Construction Manager shall adjust and update the Master Schedule and distribute copies to the Owner and Design Professional. All adjustments to the Master Schedule shall be made for the benefit of the Project.*

#### **2.6.1 SUBCONTRACTOR'S CONSTRUCTION SCHEDULE:**

*The Construction Manager shall review each Subcontractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it established completion dates that comply with the requirements of the Master Schedule.*

#### **2.6.2 CONSTRUCTION SCHEDULE REPORT:**

*The Construction Manager shall review the progress of construction of each Subcontractor on a monthly basis, shall evaluate the percentage complete of each construction activity as indicated in the Subcontractor's Construction Schedule and shall review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to the Subcontractor, Owner and Design Professional. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payment to the Contractor. The Construction Manager shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.*

#### **2.6.3 CONSTRUCTION MANAGER REVIEW OF TIME EXTENSION REQUESTS:**

*The Construction Manager shall, prior to the issuance of a Change Order, determine the effect on the Master Schedule of time extensions requested by the Subcontractor.*

#### **2.6.4 RECOVERY SCHEDULES:**

*The Construction Manager may require the Subcontractor to prepare and submit a Recovery Schedule as specified in the Contract Documents.*

#### **2.6.5 SCHEDULE OF VALUES (EACH CONTRACT):**

*The Construction Manager shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on the Subcontractor's Construction Schedule.*

#### **2.6.6 ALLOCATION OF COSTS TO SUBCONTRACTOR'S CONSTRUCTION SCHEDULE:**

*The Subcontractor's Construction Schedule shall have the total contract price allocated among the Subcontractor's scheduled activities so that each of the Subcontractors activities shall be allocated a price and the sum of the prices of the activities shall equal the total contract price. The Construction Manager shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.*

#### **2.6.7 CHANGE ORDER CONTROL:**

*The Construction Manager shall establish and implement a Change Order control system. All proposed Change Orders shall first be described in detail in writing by the Owner to the Construction Manager and then shall be described in detail in a request for proposal to the Subcontractor, accompanied by technical drawings and specifications prepared by the Design Professional. In response to the request for a proposal, the Subcontractor shall submit to the Construction Manager for evaluation detailed information concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The Construction Manager shall discuss the proposed change order with the Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the affect, if any, on the Guaranteed Maximum Price. The Construction Manager shall make recommendations to the Owner prior to the Owner's acceptance of change orders and, following Owner*



acceptance, shall prepare for signature by the Construction Manager and Subcontractor or Owner the change order documents. The Construction Manager shall verify that the Work and any adjustment of time required by approved change order has been incorporated into the Subcontractor's Construction Schedule.

**2.6.8 COST RECORDS:**

In instances where a lump sum or unit price is not determined prior to performing work described in the request for proposal, the Construction Manager shall request from the Subcontractor records of the cost of payroll, materials and equipment and the amount of payments to Sub-subcontractors incurred by the Subcontractor in performing the work.

**2.6.9 PROJECT SITE MEETING:**

Periodically the Construction Manager shall conduct meetings at the Project site with each Subcontractor and the Construction Manager shall conduct coordination meetings with all Subcontractors, the Owner and Design Professional. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the Owner and Design Professional.

**2.6.10 PROGRESS PAYMENTS:**

In consultation with the Design Professional, the Construction Manager shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Construction Manager shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Construction Manager and delivered to the Owner. The Construction Manager shall make payments that are due to all Subcontractors, suppliers and material men within ten (10) days following receipt of payment for the Work from the Owner. Receipt by the Construction Manager of payment from the Owner is a condition precedent to payment to a Subcontractor. In addition, the Construction Manager shall keep the Project and the site on which work is performed free and clear of all liens and claims from its contractors, subcontractors, suppliers or material men.

**2.6.11 CASH FLOW REPORTS:**

The Construction Manager shall prepare and distribute Cash Flow Reports during the Construction Phase. The Reports shall specify actual cash flow as compared to projected cash flow.

**2.6.12 PROGRESS PAYMENT REPORTS (EACH CONTRACT):**

The Construction Manager shall prepare and distribute the Progress Payment Reports. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this Report shall be a Certificate of Payment that shall be signed by the Construction Manager and delivered to the Owner for use by the Owner in making payments to the Construction Manager.

**2.6.13 CONTRACTOR'S SAFETY PROGRAM REPORT:**

The Construction Manager shall review the safety programs of each subcontractor as required by the Contract Documents and coordinate the safety programs for the Project.

**2.6.14 RECORD DOCUMENTS:**

The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Record Documents to the Owner.

**2.6.15 ORGANIZE AND INDEX OPERATIONS AND MAINTENANCE MATERIALS:**

Prior to final completion of the Project, the Construction Manager shall compile manufacturer's operations and maintenance manuals, warranties and guarantees and bind such documents in an organized manner.

**2.6.16 OCCUPANCY PERMIT:**

The Construction Manager shall assist the Owner in obtaining an Occupancy Permit by appropriate governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.



### **2.6.17 OCCUPANCY PLAN:**

*The Construction Manager shall assist in the preparation of an Occupancy Plan for the Project.*

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 INFORMATION AND SERVICES**

~~§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.~~

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

### **§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS**

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

### **§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE**

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™-1997 with 2001 Arizona Modifications, the Architect does not have such authority.

### § 3.3 ARCHITECT

~~The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B151™ 1997, Abbreviated Standard Form of Agreement Between Owner and Architect current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in B151™ 1997, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.~~ The Owner shall retain an Architect to provide the Basic Services, including normal structural, mechanical and electrical engineering services described in the edition of AIA Document B141 with 2001 Arizona Modifications current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those other services requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

### § 3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

### § 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

**%[BasisOfCompensation]**

*(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)*

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if such services extend beyond **%[PreconstructionSvcsWords]** ( **%[PreconstructionSvcs]** ) days from the date of this Agreement or if the originally contemplated scope of services is significantly modified.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### § 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable **%[InterestDaysOverdueWords]** ( **%[InterestDaysOverdue]** ) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon.)*

**%[InterestOverduePmts] % [BasisOfInterest]**

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

#### **4.3 REIMBURSABLE EXPENSES:**

Reimbursable Expenses are direct actual costs which are in addition to the Construction Manager's compensation for Basic and Additional Services and are limited to: Mileage, meals, lodging and travel and shall also apply to travel by the Construction Manager, its officers, employees, and consultants.

### **ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

#### **§ 5.1 COMPENSATION**

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows:

%[Compensation]

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

#### **§ 5.2 GUARANTEED MAXIMUM PRICE**

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

%[CMSavings]

(Insert specific provisions if the Construction Manager is to participate in any savings.)

#### **§ 5.3 CHANGES IN THE WORK**

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™-1997 with 2001 Arizona Modifications.

~~§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™-1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™-1997, with 2001 Arizona Modifications shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

~~§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.~~

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

### § 6.1.2 LABOR COSTS

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

#### Classification

%[ForEachBlock("op",  
OffsitePersonnel))][op.Classification]

#### Name

%[op.Name][EndBlock()]

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)*

- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

### § 6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.

- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

#### § 6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.  
(If charges for self-insurance are to be included, specify the basis of reimbursement.)  
% [Reimbursement]
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™-1997 with 2001 Arizona Modifications or other provisions of the Contract Documents.
- ~~.6 Data processing costs related to the Work.~~
- ~~.7.6~~ Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- ~~.8.7~~ Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 ~~Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.~~

#### § 6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

#### § 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™-1997 with 2001 Arizona Modifications.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™-1997 with 2001 Arizona Modifications other Conditions of the Contract which



may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

## § 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

## § 6.3 DISCOUNTS, REBATES AND REFUNDS

§ 6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## § 6.4 ACCOUNTING RECORDS

§ 6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of ~~three~~ five years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 CONSTRUCTION PHASE

### § 7.1 PROGRESS PAYMENTS

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

%[PmtPeriodApp]

§ 7.1.3 Provided an Application for Payment is received by the Architect not later than the %[CMPayDay] day of a month, the Owner shall make payment to the Construction Manager not later than the %[OwnerPayCMDay] day of the %[MonthToPayCM] month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than %[DaysPayAfterLateWords] ( %[DaysPayAfterLate] ) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™-1997 *with 2001 Arizona Modifications*, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the Construction Manager's Fee, less retainage of **[%[CMFeeRetainageWords]** ( **[%[CMFeeRetainage]** ). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™-1997 *with 2001 Arizona Modifications*.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than **[%[ContractorPaySubWords]** ( **[%[ContractorPaySub]** ). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the

documentation submitted in accordance with Section 7.1.4 or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

## § 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™-1997 with 2001 Arizona Modifications, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

%[FinalPayment]

§ 7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™-1997 with 2001 Arizona Modifications or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™-1997 with 2001 Arizona Modification. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™-1997 with 2001 Arizona Modifications.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

### § 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-1997 *with 2001 Arizona Modifications*. Such insurance shall be written for not less than the following limits, or greater if required by law:

~~§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:~~

#### **8.1.1 INSURANCE REQUIREMENTS:**

**The insurance requirements under this contract refers to the requirements under AIA A201 with 2001 Arizona Modifications - ARTICLE 11 INSURANCE AND BONDS**

~~%[WorkersComp]~~

~~§ 8.1.2 Commercial General Liability including coverage for Premises Operations, Independent Contractors' Protective, Products Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):~~

~~%[EachOccurrence] Each Occurrence~~

~~%[GeneralAggregate] General Aggregate~~

~~%[PersonalAdvertInjury] Personal and Advertising Injury~~

~~%[ProductsCompOps] Products Completed Operations Aggregate~~

~~.1 The policy shall be endorsed to have the General Aggregate apply to this Project only.~~

~~.2 Products and Completed Operations insurance shall be maintained for a minimum period of at least %[MinPeriodCompOpsWords] ( %[MinPeriodCompOps] ) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.~~

~~.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™-1997.~~

~~§ 8.1.3 Automobile Liability (owned, non owned and hired vehicles) for bodily injury and property damage:~~

~~%[MinAutoCoverage] Each Accident~~

~~§ 8.1.4 Other coverage:~~

~~%[OtherCoverage]~~

~~(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)~~

### § 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

~~§ 8.2.1 Property Insurance:~~

~~%[DeductibleOccurrence] Deductible Per Occurrence~~

~~%[AggregateDeductible] Aggregate Deductible~~

~~§ 8.2.2 Boiler and Machinery insurance with a limit of: %[MinimumLimit].~~

~~(If not a blanket policy, list the objects to be insured.)~~

~~%[ObjectInsured]~~

## § 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager [%PerfOrPayBond] (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to [%PerContractSumWords] ( [%PerContractSum] ) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

### § 9.1 DISPUTE RESOLUTION

9.2.1 ~~§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™-1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration. Any other claim, dispute or other matter in question arising out of or related to this Agreement or breach thereof shall be settled in accordance with Article 4 of AIA Document A201 with 2001 Arizona Modifications, except as required by A.R.S. Title 41, Chapter 23, Article 9 and rules adopted there under. In addition, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. Any mediation arising under this Paragraph shall be conducted in accordance with the provisions of Section 10.1.2.~~

### § 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™-1997, with 2001 Arizona Modifications - General Conditions of the Contract for Construction.

### § 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

### § 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™-1997 with 2001 Arizona Modifications shall apply to both the Preconstruction and Construction Phases.

### § 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of Arizona ~~the place where the Project is located.~~

### § 9.2.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™-1997 with 2001 Arizona Modifications, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1, 14.1.2 and 14.1.3 of the AIA A201™-1997 with 2001 Arizona Modifications.



§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager.
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

## § 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™-1997 with 2001 Arizona Modifications.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™-1997 with 2001 Arizona Modifications, shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™-1997 with 2001 Arizona Modifications shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

## § 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™-1997 with 2001 Arizona Modifications; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™-1997 with 2001 Arizona Modifications, except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

## ARTICLE 11 OTHER CONDITIONS AND SERVICES

%[OtherConditionsAndServices]

11.1 The documentation shall be prepared by the Construction Manager and submitted to the Owner with the Guaranteed Maximum Price. The documentation may include drawings, sketches, specifications, calculation or other data used to identify the basis of the Guaranteed Maximum Price.

11.2 As a separate contract, purchase orders or other fixed contract prices are obtained and are awarded to each of the separately-priced divisions of the Work required for the Project as shown in the Project and Construction Budget, the Guaranteed Maximum Price and the project and Construction Budget shall be adjusted as follows:

11.3 If the cost of any division as awarded is less than the amount shown on the Project and Construction Budget, as determined in accordance with the terms of this agreement, the amount indicated in the Project and Construction Budget for such item shall be reduced by an amount equal to the difference between such cost and the amount shown on the Project and Construction Budget for such item and the Contingency shall be increased by the same amount.

11.4 If the cost of any division is greater than the amount shown in the Project and Construction Budget, to the extent that the Contingency is sufficient, the amount shown in the Project and Construction Budget for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the Project and Construction Budget for such item and the Contingency shall be reduced by the same amount. The Guaranteed Maximum Price shall not be adjusted and

11.5 If the Owner directs the Construction Manager to award a contract to a bidder other than the lowest responsible and responsive bidder for any portion of the Project, the Guaranteed Maximum Price shall be increased by the amount of the difference between the award price and the price submitted by the lowest responsible and responsive bidder. The Contingency shall not be changed.

11.6 In the event that the Cost of the Project exceeds the Guaranteed Maximum Price and any adjustments therein as may be due pursuant to the terms hereof, the Construction Manager shall continue to perform at no additional cost to the Owner until the project, defined by this Agreement and attachments hereto is complete. The Construction Manager shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Project, even if such amounts are in aggregate in excess of the Guaranteed Maximum Price.

11.7 At the completion of this Contract, any remaining Contingency Amount shall be returned to the Owner by issuance of a Change Order to the Contract. This action will result in a reduction to the total Guaranteed Maximum Price.

This Agreement entered into as of the day and year first written above.

OWNER

CONSTRUCTION MANAGER

(Signature)

%[OwnerRepName]%[OwnerRepTitle]

(Printed name and title)

Date

ATTEST

(Signature)

%[ConstructionManagerRepName]%[ConstructionManagerRepTitle]

(Printed name and title)

Date

ATTEST